

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KYLE AARON DOBSCHENSKY,

Defendant-Appellant.

UNPUBLISHED

October 16, 2001

No. 223850

Midland Circuit Court

LC No. 98-008893-FH

Before: K. F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted on November 23, 1998, of escape from jail while awaiting trial for a felony, MCL 750.197(2), and conspiracy to commit escape from jail while awaiting trial for a felony, MCL 750.157a. On December 16, 1998, defendant entered guilty pleas to nine other counts in three separate cases in accordance with a plea agreement. At a consolidated sentencing hearing on October 8, 1999, defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of ten to fifteen years for each conviction, to be served consecutive to the prison terms imposed on the other plea-based convictions. Defendant appeals as of right. We affirm.¹

Defendant first argues that he is entitled to resentencing because the sentence imposed for the escape convictions violated a *Cobbs*² agreement in the plea cases that the minimum sentence for the escape convictions would not exceed five years. Whether the court is legally required to adhere to the sentence contained in a *Cobbs* agreement is a matter of law that this Court reviews de novo. *People v Alexander*, 234 Mich App 665, 675; 599 NW2d 749 (1999).

A defendant violates the terms of a plea agreement by escaping from custody. *People v Kean*, 204 Mich App 533, 537; 516 NW2d 128 (1994). A defendant is not entitled to the benefit of the bargain of a plea agreement where he violates the terms of the agreement. *Kean, supra* at 535-536. Because defendant violated the terms of the *Cobbs* agreement by escaping from

¹ The present appeal concerns only defendant's escape convictions. Defendant has not filed an application for leave to appeal from the plea based convictions, and therefore this Court does not have jurisdiction to allow defendant to withdraw those pleas.

² *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

custody on January 2, 1999, after the *Cobbs* agreement but before sentencing, the trial court did not abuse its discretion by refusing to abide by the agreement.

Defendant also argues that he is entitled to resentencing because he did not have adequate time to in which to review the presentence report before sentencing. A defendant must suffer actual prejudice as a result of the delay in receiving the PSIR in order to be entitled to resentencing. MCL 769.26. Here, defendant commented at length at the sentencing hearing about the contents of the report. Defendant fails to allege that the report contains any inaccurate or otherwise erroneous information. Hence, defendant has not established entitlement to resentencing.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald